

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: El Paso City-County Health and Environmental District

AGENDA DATE: December 7, 2004

CONTACT PERSON/PHONE: Jorge C. Magaña, MD, FAAP, Director

DISTRICT(S) AFFECTED: All

CONSENT/REGULAR AGENDA: Consent Agenda

SUBJECT: That the Mayor be authorized to sign an intergovernmental agreement between the Texas Commission on Environmental Quality (TCEQ), **Contract No. 582-5-55897** and related documentation, on behalf of the El Paso City-County Health and Environmental District (EPCCHED), for the operation and maintenance of ten (10) TCEQ whole air samplers in the El Paso Area during the period of January 1, 2005 to December 31, 2005. TCEQ is to provide not more than THREE HUNDRED EIGHTY FOUR THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$384,400.00). There is no cost to EPCCHED.

BACKGROUND / DISCUSSION: The TCEQ has a need to contract for the service to operate and maintain ten (10) whole air samplers in the El Paso, Texas area. The proposed work must be performed in accordance with all standard operation procedures (SOP'S) developed by the TCEQ, EPA, and the instruments manufacturers requirements.

PRIOR COUNCIL ACTION: This is a new contract. Council has previously approved Air Quality Program to provide these activities with the PM Sampling Contract of FY2004.

AMOUNT AND SOURCE OF FUNDING:

Source of Funds: FY2005

TCEQ \$384,400.00

BOARD / COMMISSION ACTION: Approved by Board of Health on November 17, 2004.

***FASTTRACK PLEASE**

*****REQUIRED AUTHORIZATION*****

LEGAL: Lisa A. Hayes, Asst. City Attorney

FINANCE: (if required)(Ex:OMB Director)_____

DEPARTMENT HEAD: (Purchasing fillsl in requesting dept. head's name)_____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an intergovernmental agreement between the Texas Commission on Environmental Quality (TCEQ), **Contract No. 582-5-55897** and related documentation, on behalf of the El Paso City-County Health and Environmental District (EPCCHED), for the operation and maintenance of ten (10) TCEQ whole air samplers in the El Paso Area during the period of January 1, 2005 to December 31, 2005. TCEQ is to provide not more than THREE HUNDRED EIGHTY FOUR THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (384,400.00). There is no cost to EPCCHED.

PASSED AND APPROVED this 7th DAY OF December, **2004**.

CITY OF EL PASO:

Joe Wardy
Mayor

ATTEST:

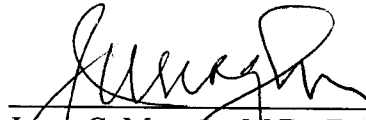
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Lisa A. Hayes
Assistant City Attorney

APPROVED AS TO CONTENT:



Jorge C. Magaña, M.D., F.A.A.P., Director
City-County Health & Environmental District

**AGREEMENT
INTERAGENCY/INTERLOCAL
CATEGORY I**

Whole Air Monitoring

Name of Project

THIS AGREEMENT is entered into by and between:

the Texas Commission on Environmental Quality, an agency of the State of Texas (hereinafter TCEQ),
and

El Paso City-County Health & Environmental District, an agency or political subdivision of the State of Texas
(hereinafter PERFORMING PARTY),

pursuant to the authority granted and in compliance with applicable provisions of the Interagency Cooperation Act,
TEX. GOV'T. CODE ch. 771 and Intergovernmental Cooperation Act, TEX. GOV'T. CODE ch. 791.

TCEQ and PERFORMING PARTY, in consideration of the mutual covenants hereinafter set forth, agree as
follows:

Article 1 Work

See attached Scope of Work

Article 2 PRICING AND PAYMENT

See attached Schedule of Fixed Rates (for payment at fixed rates based on the nearest practicable estimate of actual
costs).

Article 3 MAXIMUM AMOUNT OF CONTRACT

The total amount of this contract shall not exceed:

<u>Three Hundred Eighty Four Thousand Four Hundred Dollars and no cents</u>	<u>\$ 384,400.00</u>
(Written amount)	(\$ Numerical amount)

unless this Contract is amended in writing. It is expressly understood and agreed by the parties hereto that the
performance on the part of the TCEQ of its obligations hereunder is contingent upon and subject to actual receipt
by the TCEQ of sufficient and adequate funds from the sources contemplated by this Contract.

Article 4 TERM OF CONTRACT

This Contract shall begin on 1-1, 2005 or date of last contract signature, whichever is later, and shall terminate on
full performance, which is due on 12-31, 2005, unless terminated early or extended in accordance with the terms of
the Contract.

Article 5 CERTIFICATIONS

1. THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the parties, (2) the proposed arrangements serve the interest of efficient and economical administration of State Government, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.
2. The TCEQ further certifies that it has the authority to contract for the above services by authority granted in the Current Appropriations Act. And TEX. WATER Code § 5.229.
3. PERFORMING PARTY further certifies that it has authority to perform the services contracted for herein.

Article 6 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Contract between TCEQ and PERFORMING PARTY concerning the Work consist of the following:

1. Scope of Work
2. Project Representative/ Records Location
3. Additional exhibits entitled
 - Exhibit A – HUB/MWBE Progress Assessment Report Forms
 - Exhibit B – Certification Regarding Debarment, Suspension & other Matters
 - Exhibit C – Release of Claims Form
 - Exhibit D – Certification Regarding Lobbying
 - Exhibit E – Cost and Price Analysis
4. **One of the following (whichever is checked):**
 - ☐ Contracts Cost Budget
 - or ☒ Schedule of Fixed Rates

(If neither is checked, or both are checked, this Contract is void)
5. General Conditions
6. **One of the following (whichever is checked):**
 - ☒ Federal Conditions
 - or ☐ DELIBERATELY OMITTED (Federal Conditions are not incorporated into this Contract)

(If neither is checked, or both are checked, this Contract is void)

There are no Contract Documents other than those listed above in the Article. The Contract Documents may be amended, modified or supplemented only as provided in the General Conditions.

Article 7 ASSIGNMENT AND TERMINATION

In the event that the El Paso City-County Health and Environmental District ceases to exist as a public health district created by the City of El Paso and the County of El Paso pursuant to the provisions in Section 121.041,

et seq., Health and Safety Code, the District may at any time prior to the final dissolution of the District and at its option, terminate this agreement or assign the agreement to the City of El Paso should the City establish or intend to establish a local health department pursuant to the provisions in Section 121.031 et seq., Health and Safety Code. Such assignment by the District shall be subject to the acceptance of the assignment by the City of El Paso. Such assignment shall be subject to written acceptance of TCEQ, provided that such acceptance shall not be unreasonably withheld. The failure of the City to establish a local health department or the failure of the City or the TCEQ to accept the assignment of this agreement shall result in the automatic termination of this agreement upon the date of final dissolution of the El Paso City-County Health and Environmental District

In the event of an assignment of the agreement to the City of El Paso, and upon the written acceptance of the assignment by TCEQ, City of El Paso shall be the Performing Party under this agreement. Any payment for performance of services under this agreement that may be due to the District at the time of the effective date of an assignment or upon the termination of this agreement in accordance with this Article shall be paid by TCEQ to the City of El Paso or as otherwise directed in a resolution duly adopted by the El Paso City-County Health and Environmental District.

The undersigned bind themselves to the faithful performance of this Contract:

TCEQ:

Texas Commission on Environmental Quality

By: _____
Authorized Signature

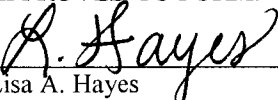
Mark R. Vickery, P.G.
Printed Name

Deputy Executive Director
Title

Date: _____

Joe Wardy, Mayor
Date: _____

APPROVED TO FORM:


Lisa A. Hayes
Assistant City Attorney
Date: 11/11/04

PERFORMING PARTY:

El Paso City-County Health District

By: 
Authorized Signature


Jorge C. Magana, M.D., F.A.A.P.
Printed Name

Director
Title

Date: _____

Attest:

Richarda D. Momsen, City Clerk
Date: _____


John M. Lane, Chairman,
Board of Health
Date: 11/17/04

Scope of Work
El Paso City-County Health District

A. Facts/Purpose

1. The Texas Commission on Environmental Quality (TCEQ) has a need to contract for the service to operate and maintain ten (10) whole air samplers in the El Paso, Texas area.
2. The proposed work must be performed in accordance with all standard operation procedures (SOP's) developed by the TCEQ, EPA, and the instruments manufacturers requirements.

B. TCEQ Responsibilities:

1. TCEQ staff will be responsible for:
 - a. All computer hardware and software will be provided by the TCEQ to perform this service
 - b. All necessary equipment will be provided by the TCEQ to perform this service.
 - c. All training and postage to perform this work will be provided by TCEQ.

C. Contractor Responsibilities

The contractor shall provide:

1. The contractor will have to provide the competent personnel, with cell phone, or pager and automobile to provide this on site service.

D. Qualifications and Experience

1. Preferably the site operators shall have six months hands on experience with ambient air particulate samplers.
2. A thorough understanding of ambient air monitoring for particulate matter sampler is required.

E. Description of Deliverables

1. Whole Air Monitoring
 - A. Operation, maintenance, Quality Assurance/Quality Control (QA/QC), data review as per the SOP's.

F. Schedule of Deliverables

The chain of custody sheets for each sampler must be adhered for the whole air sampler.

G. Acceptance Criteria

1. A 90% quarterly filter delivery to the laboratory is required or payment will be adjusted, excluding acts of God.

PROJECT REPRESENTATIVES
RECORDS LOCATION

ARTICLE 1. PERFORMING PARTY

The term "PERFORMING PARTY" as used in this *Project Representatives / Records Location* means either PERFORMING PARTY or CONTRACTOR, as applicable.

ARTICLE 2. TCEQ PROJECT REPRESENTATIVE

The individual named below is the TCEQ Project Representative, who is authorized to give and receive communications and directions on behalf of the TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative or his or her designee.

<u>Patti De La Cruz</u> (Name)	Telephone No.: <u>512/239-6816</u>
<u>Network Coordinator</u> <u>165</u> (Title) (Mail Code)	Facsimile No.: <u>512/239-1605</u>
Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087	

ARTICLE 3. PERFORMING PARTY PROJECT REPRESENTATIVE

The individual named below is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

<u>Jesus Revnoso</u> (Name)	Telephone No.: <u>915/543-3646</u>
<u>Supervisor, Air Pollution Control Program</u> (Title)	Facsimile No.: <u>915/543-3655</u>
<u>222 South Campbell St.</u> (Mailing Address)	
<u>El Paso</u> <u>TX</u> <u>79901-1196</u> (City) (State) (Zip Code)	

ARTICLE 4. SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted to (whichever is checked):

☒ the TCEQ Project Representative.

☐ the TCEQ Disbursements Section.

(if neither box is checked, payment requests must be submitted to the TCEQ Disbursements Section).

ARTICLE 5. DESIGNATED LOCATION FOR RECORDS ACCESS AND REVIEW

The PERFORMING PARTY designates the physical location indicated below for record access and review pursuant to any applicable provision of this contract:

<u>El Paso City County Health and Environmental District</u> (Location)		
<u>5115 El Paso Drive</u> (Mailing Address)		
<u>El Paso</u>	<u>Texas</u>	<u>79905</u>
(City)	(State)	(Zip Code)

Schedule of Fixed Rates

ARTICLE 1. PRICES

Payment for required Work performed under this Contract will be based on the following fixed price(s):

<u>Item</u>	<u>Est. Quantity</u>	<u>Unit Price</u>	<u>Total</u>
<u>Monitoring Activities (BAG)</u>	<u>10 Monitors</u>	\$ 38,440.00	\$ 384,400.00
<u> </u>	<u> </u>	\$ _____	\$ _____
<u> </u>	<u> </u>	\$ _____	\$ _____
<u> </u>	<u> </u>	\$ _____	\$ _____
<u> </u>	<u> </u>	\$ _____	\$ _____
<u> </u>	<u> </u>	\$ _____	\$ _____
<u> </u>	<u> </u>	\$ _____	\$ _____
<u> </u>	<u> </u>	\$ _____	\$ _____
		<u>Total Annually</u>	\$384,400.00

ARTICLE 2. SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted at the interval specified below (whichever is checked; if none is checked, payment requests must be submitted monthly; if more than one is checked, invoices must be submitted when both requirements are met):

- ☐ monthly
- ☐ upon completion of deliverables specified herein (see _____).
- ☐ upon completion of all Work
- ☒ Other (specify) Quarterly

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

GENERAL CONDITIONS

ARTICLE 1. WORK

PERFORMING PARTY agrees to provide the work described in and required by this Contract. In this Contract the term “*Work*” means the entire completed undertaking, or the various separately identifiable parts thereof. Work includes all goods, labor, services, materials and equipment provided in fulfillment of this Contract by any person or entity including PERFORMING PARTY’s employees, agents, assigns, suppliers, and subcontractors.

ARTICLE 2. AMENDMENT

This Contract may be amended only by written agreement signed by both parties.

ARTICLE 3. INSURANCE

PERFORMING PARTY will require its contractors and their subcontractors to maintain insurance coverage sufficient to protect TCEQ against any and all claims that may arise out of or resulting from their performance of the Work and the other obligations undertaken in this Contract, and to maintain Workers Compensation Insurance which complies with Texas statutory requirements.

ARTICLE 4. ACCEPTANCE, CORRECTIONS, WAIVER, WARRANTY, QUALITY

1. Acceptance. All Work must be complete and satisfactory in the reasonable judgment of the TCEQ.
2. Corrections. PERFORMING PARTY will correct errors, omissions, and deficiencies at no charge to the TCEQ.
3. Waiver. No waiver, whether expressed or implied, shall be construed as a continuing waiver unless it is specifically described in writing as a continuing waiver.
4. Warranty. All warranties implied by law are applicable to the Work. Nothing in this Contract nor any action of the TCEQ will act as a disclaimer of any warranty. All warranties are for a period of ONE YEAR from the date of acceptance unless a different period is stated in this Contract or in a written warranty. PERFORMING PARTY expressly warrants that the TCEQ will receive the benefits of third-party warranties (whether manufacturer or supplier) applicable to the Work.
5. Quality. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract. If required by TCEQ, PERFORMING PARTY will furnish satisfactory evidence (which may include reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract.

ARTICLE 5. PAYMENT

1. Payment Methods. TCEQ will reimburse PERFORMING PARTY’s allowable costs of providing Work which is satisfactory, accepted by TCEQ, and in conformity with all requirements of this Contract and applicable law.
2. Reimbursement of Actual Cost as Incurred. This Contract contains a *Contract Costs Budget* indicating expected contract-related costs for the required Work. PERFORMING PARTY will be paid on the basis of reimbursement of actual costs. At the intervals specified in the *Contract Costs Budget*, PERFORMING PARTY may submit a request for reimbursement of the actual costs it has incurred. All such requests must be accompanied by supporting documentation as required by this Contract. PERFORMING PARTY agrees that the TCEQ’s obligation to reimburse the PERFORMING PARTY’s costs will remain within the *Contract Costs Budget* and that cumulative transfers among the budgeted direct cost categories will not exceed ten percent (10%) of the

total reflected therein.

- a. If PERFORMING PARTY is a state agency as defined in GOV'T CODE, Chapter 791, then all reimbursement requests must be submitted to the TCEQ Project Representative on a State of Texas Interagency Transaction Voucher. All requests must be accompanied by a summary report or invoice showing the budgeted cost categories for the reported expenditures and indicating the amount remaining in each category.
 - b. If PERFORMING PARTY is not a state agency, then all reimbursement requests must be submitted to the TCEQ Project Representative with a completed TCEQ *Financial Status Report* (TCEQ Form 269a) and (as applicable) TCEQ *Supplemental Financial Status Report* Forms 269a-1, 269a-3, and 269a-4. A final *Financial Status Report* must be submitted no later than 90 days following the termination date of this Contract.
3. Payment at Fixed Rates. If this Contract contains a *Schedule of Fixed Rates*, PERFORMING PARTY will be paid on the basis of agreed upon fixed rates (fixed prices). At the intervals specified in the *Schedule of Fixed Rates*, PERFORMING PARTY may submit an invoice requesting payment for all satisfactorily completed work at the fixed rates specified in the *Schedule of Fixed Rates*. All such requests must be submitted to the TCEQ Project Representative and must be accompanied by supporting documentation as required by this Contract. If PERFORMING PARTY is a state agency, the payment request must be submitted on an Interagency Transaction Voucher.
 4. Timely Payment Requests Required. TCEQ may refuse to pay any request submitted more than 90 days after the termination of this Contract.

ARTICLE 6. SUBCONTRACTORS, OTHERS

1. Qualified Personnel. All employees and subcontractors employed by PERFORMING PARTY on or for the Work must have sufficient qualifications to perform the Work.
2. Objections. PERFORMING PARTY will not employ any particular subcontractor, supplier or other person or organization on or for the Work if TCEQ makes a reasonable written objection against such subcontractor, supplier, person, or organization. PERFORMING PARTY will not be required to employ any particular subcontractor, supplier or other person or organization if PERFORMING PARTY makes a reasonable objection.
3. Subcontracts. PERFORMING PARTY will include all provisions which may be necessary to accomplish all requirements of this Contract in its employment policies and contracts and its subcontracts, and shall require its subcontractors to do the same.

ARTICLE 7. INTELLECTUAL PROPERTY

1. License of Future Rights. With respect to any intellectual property which is conceived, developed, written, invented, first actually reduced to practice or otherwise produced by PERFORMING PARTY, its employees, subcontractors, or subcontractor's employees during the performance of the Work, PERFORMING PARTY hereby assigns to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish and modify such intellectual property and authorize others to do so for TCEQ purposes. Upon termination of this Contract, all data and information by PERFORMING PARTY will be furnished to TCEQ.
2. License of Existing Rights. PERFORMING PARTY grants to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish, and modify any intellectual property in the Work and to authorize others to do so for TCEQ purposes. PERFORMING PARTY shall secure all necessary intellectual property licenses from third parties and warrants that the Work and the intended use of the Work will not infringe any property rights of any third-party. PERFORMING PARTY agrees to require its contractors to indemnify and hold harmless TCEQ from damages arising from or related to any infringement of rights in intellectual property. To

the extent permitted by law, PERFORMING PARTY agrees to indemnify and hold harmless TCEQ from damages arising from or related to any infringement of rights in intellectual property.

ARTICLE 8. SEVERABILITY

The fact that a particular provision is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions and the contract will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be replaced with language that is as close as possible to the intent of the original provision.

ARTICLE 9. SUSPENSION; TERMINATION

1. For Cause. In the event of PERFORMING PARTY's failure to perform the Work as required by the Contract, violation of applicable law, substantial or material default, or other cause, TCEQ may suspend the Work or terminate this Contract for cause.

2. *Force Majeure*. In the event of delay or failure of performance caused by *force majeure*, TCEQ may terminate this Agreement in whole or part upon seven (7) days written notice.

3. For Convenience. TCEQ may terminate this Contract for convenience and without cause upon seven (7) days notice.

4. Payment Adjustment. If the TCEQ terminates for convenience or because of *force majeure*, PERFORMING PARTY shall be paid only for goods and services provided and necessary expenses incurred prior to termination.

ARTICLE 10. SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

ARTICLE 11. LAWS AND REGULATIONS

PERFORMING PARTY shall give all notices and comply with all applicable law regarding the Work. Except where otherwise expressly required by applicable law, TCEQ shall not be responsible for monitoring PERFORMING PARTY compliance with any applicable law.

ARTICLE 12. AUDIT, ACCESS TO RECORDS

The PERFORMING PARTY shall maintain books and records concerning all Work under this Contract (including that performed by subcontractors), and shall retain them for at least three (3) years from the date of termination of this Contract. The TCEQ, the Texas State Auditor's Office, or any of their duly authorized representatives may review, audit, copy, or disclose the contents of such books or records at any time.

ARTICLE 13. MISCELLANEOUS

1. Except as otherwise provided in this Contract, PERFORMING PARTY will direct all communications with the TCEQ to the Project Representative designated by the TCEQ. The PERFORMING PARTY will designate a Project Representative to receive all communications from the TCEQ. Both Project Representatives will be designated in writing (see *Project Representatives / Records Location*).

2. "Time is of the Essence" will apply to all time limits stated in the Contract.

3. The PERFORMING PARTY will adhere to all applicable standards, principles and guidelines detailed in the Uniform Grant and Contract Management Standards (UGCMS), including those related to financial monitoring, auditing and record keeping.

ARTICLE 14. DELINQUENT STATE TAXES

The PERFORMING PARTY agrees that any payments due under this Contract will be applied towards any debt owed to the State of Texas. This requirement is not applicable to PERFORMING PARTIES who are state agencies as defined in Gov't Code, Chapter 791.

ARTICLE 15. REMEDIES AND SANCTIONS

1. In accordance with Chapter 2259 Texas Government Code, the following Schedule of Remedies applies to this Contract in the event of substandard performance or other failure to conform to the requirements of the Contract or applicable law.

- a. Reject the substandard performance and request corrections without charge to the TCEQ.
- b. Issue a notice of substandard performance or other non-conforming act or omission.
- c. Request and receive the return of any over payments or inappropriate payments.
- d. Reject associated reimbursement requests and suspend payments, pending accepted revision of substandard performance or non-conformity. Note: Funds may be retained by TCEQ for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.
- e. Suspend all or part of the Work, pending accepted revision of substandard performance or non-conformity.
- f. Terminate the contract, demand and receive: return of all equipment purchased of contract funds, return of all unexpended funds, and repayment of expended funds.

2. If the TCEQ finds the PERFORMING PARTY's performance to be substandard, TCEQ may provide its written evaluation report to other governmental entities at any time. TCEQ may also provide its written evaluation report to the public as authorized by law.

3. TCEQ may avail itself of any remedy or sanction provided in this Contract or in law to recover any losses rising from or caused by the PERFORMING PARTY's substandard performance or any non-conformity with the Contract or the law. The remedies and sanctions available to TCEQ in this contract shall not limit the remedies available to the TCEQ under law.

ARTICLE 16. DISPUTES, CLAIMS, REMEDIES

Continuing the Contract Activities. Performing Party shall carry on the Contract Activities and adhere to the progress schedule during all disputes or disagreements with TCEQ unless ordered to stop the Contract Activities. No Contract Activities shall be delayed or postponed pending resolution of any disputes or disagreements.

Payment not a Release. Neither payment by TCEQ nor any other act or omission other than an explicit written release constitutes a release of Performing Party from liability for losses under this Contract.

Schedule of Remedies available to the TCEQ. In accordance with Chapter 2261, Texas Government Code, the following Schedule of Remedies applies to this contract. In the event of Performing Party's nonconforming, TCEQ may

Issue notice of nonconforming performance.

Reject nonconforming performance and request corrections without charge to the TCEQ,

Reject a reimbursement request and/or suspend further payments pending accepted revision of the nonconformity;

Suspend all or part of the Contract Activities and/or payments pending accepted revision of the nonconformity.

Demand restitution and recover previous payments where performance is subsequently determined nonconforming;

Terminate the contract without further obligation for pending or further payment by the TCEQ and receive restitution of previous payments.

Cumulative Remedies. The rights and remedies provided to the TCEQ in this Contract, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

ARTICLE 17. RELEASE OF CLAIMS

Upon satisfactory completion of the work performed hereunder and prior to final payment under this Agreement for such work, or prior to settlement upon termination of this Agreement and as a condition to final payment/settlement, the PERFORMING PARTY shall execute and deliver to the TCEQ a release of all claims against the TCEQ arising under or by virtue of this Agreement.

ARTICLE 18. BANKRUPTCY CLAUSE

If the Contractor files for bankruptcy, immediately notify TCEQ in writing according to the Notice provisions AND send notification directly to TCEQ Bankruptcy Program. The Contractor's notice to the bankruptcy program must include the appropriate contract number(s).

FEDERAL TERMS AND CONDITIONS

ARTICLE 1. FEDERAL REQUIREMENTS

This Contract is funded in part with federal grant money. The following conditions apply to this Contract in addition to all other contract terms. All applicable requirements of TCEQ's federal grants and 40 CFR Parts 30 through 35 are incorporated herein by reference (TCEQ will provide copies of applicable federal grants or regulations upon request). The term "PERFORMING PARTY" as used in these *Federal Conditions* means either PERFORMING PARTY or CONTRACTOR, as applicable.

ARTICLE 2. FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS

A nonexclusive, perpetual, irrevocable license to use, copy, publish, and modify any intellectual property to which rights are granted or assigned to TCEQ in this Contract are hereby also granted to, assigned to, or reserved by the Federal Government. To the extent consistent with the rights of third parties, the Federal Government shall also have the right to sell any intellectual property right it reserves or acquires through this Contract.

ARTICLE 3. ACKNOWLEDGMENT OF FINANCIAL SUPPORT

The PERFORMING PARTY shall acknowledge the financial support of the TCEQ and the U.S. EPA whenever work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, other than documents prepared exclusively for internal use within the TCEQ, shall carry the following notation on the front cover or title page:

PREPARED IN COOPERATION WITH THE
Texas Commission on Environmental Quality AND
U.S. ENVIRONMENTAL PROTECTION AGENCY

The preparation of this report was financed through grants from the U.S. Environmental Protection Agency through the Texas Commission on Environmental Quality.

If the funding source is a U.S. agency other than U.S. EPA, the name of the appropriate federal agency should be substituted.

ARTICLE 4. COST AND PRICE OF THIS CONTRACT

If this Contract was not competitively procured or if payment is based on reimbursement of actual costs, then PERFORMING PARTY shall submit cost information sufficient for a cost analysis as required by 40 CFR §31.36. This information must be submitted on forms provided by the TCEQ.

ARTICLE 5. ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT SYSTEMS

1. PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with 40 CFR §31.20. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

2. PERFORMING PARTY shall have a property management system that complies with the standard of and requirements in 40 CFR §§ 31.32 through 31.33.

ARTICLE 6. RECORD DOCUMENTS, DATA, RECORDS, ACCESS, AND AUDIT

The Federal Government and its agencies will have the same rights of access to records as are granted to, assigned to, or reserved by the TCEQ under this Contract.

ARTICLE 7. DEBARMENT

On or prior to the effective date of this Contract, PERFORMING PARTY must submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters. PERFORMING PARTY must also

submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters / Lower Tier for each subcontractor it employs to conduct the Work. These certifications must be submitted on forms provided by the TCEQ.

ARTICLE 8. MINORITY BUSINESS ENTERPRISES / WOMEN'S BUSINESS ENTERPRISES (MWBEs)

1. PERFORMING PARTY shall take steps to encourage participation by minority business enterprises and women's business enterprises (MWBEs) in the performance of this Contract.

2. If the *General Conditions* of this Contract do not contain a requirement that PERFORMING PARTY submit information regarding its subcontracts with Historically Underutilized Businesses (HUBs) as defined by Texas law, then PERFORMING PARTY shall comply with the MBE/WBE requirements imposed on TCEQ in the federal grant or grants funding this Contract, and submit information regarding its subcontracts with MBE/WBEs on forms provided by the TCEQ.

3. PERFORMING PARTY agrees that qualified MWBEs shall have the maximum practicable opportunity to participate in the performance of the Work required under this Contract through possible subcontracts to carry out portions of the Work and by way of goods and/or services procurement contracts that directly support the required Work.

4. PERFORMING PARTY will submit a completed HUB PROGRESS ASSESSMENT REPORT with each reimbursement request submitted. At a minimum this report shall include the name of the MWBE, a description of the work, services or materials provided, the amount paid to the MWBE, and the name and telephone number of a contact person within the MWBE.

5. The PERFORMING PARTY shall conduct the following actions in connection with solicitations for subcontractors and for suppliers (vendors) of contract-required goods and/or services:

5.1. Place qualified MWBEs on solicitation lists for subcontractors and vendors;

5.2. Assure that at least three (3) MWBEs are solicited whenever they are potential sources for subcontractor-performed work or vendor-provided goods and/or services;

5.3. Each solicitation shall include a copy of the specifications, adequate information about the plans, Scope of Service, and requirements of the work to be subcontracted or the goods and/or services to be procured, and shall provide sufficient time to allow all interested parties the opportunity to participate effectively;

5.4. Records of solicitations for subcontractor and/or vendor services, including the responses received from potential MWBE subcontractors and vendors, shall be maintained and reported to TCEQ;

5.5. Submit explanatory information in cases where bids were not solicited prior to obtaining the services of subcontractors or vendors, or where a MWBE was low bidder but the subcontract or procurement contract was awarded to a non MWBE;

5.6. Divide total subcontractor or vendor requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such business enterprises; if sufficient subcontracting or goods and/or service provider opportunities are not available, PERFORMING PARTY shall submit explanatory information to TCEQ;

5.7. Establish delivery schedules, where requirements permit, which encourage participation by MWBEs;

5.8. Utilize the Texas General Services Commission (GSC) Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Directory (<<http://www.gsc.state.tx.us>>)

and the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce (<<http://www.doc.gov>>) when searching for MWBE subcontractors and/or vendors; and

5.9. Require its subcontractors to take the actions listed in 5.1 - 5.8 of this Article in all of its subcontracts that contemplate the letting of lower-tier subcontracts.

ARTICLE 9. PROHIBITION USE OF FEDERAL FUNDS FOR LOBBYING AND LITIGATION

Contractor agrees that none of the funds paid under this Contract will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. When Contractor applies for final payment, Contractor will certify on a written form provided by the TCEQ that Contractor has complied with this provision.

Exhibit A

HUB Progress Assessment Report (PAR)

Part A. Identifying Information.

1. TCEQ Contract No.: _____ 2. Your Invoice No.: _____
3. Work Order No. (if applicable) _____ 4. For work completed between ____ / ____ / ____ and ____ / ____ / ____
5. Prime Contractor ("You"): _____ 6. Prime Contractor Vendor ID #: _____
7. Contact: _____ 8. Phone: (____) ____ - ____ 9. Is the Prime Contractor a Texas certified HUB and performing at least 25% of the total value of the contract? Yes ___ No ___

Part B. Invoice and HUB Subcontracting Information.

10. ☐ If you have used no subcontractors this period, check here.

Name and Address of HUB Subcontractor	Vendor ID No.	Type of HUB	Provided*:	Value of this subcontractors participation for this invoicing period
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$
Total				\$

* If subcontractor's services include both labor and materials, check "services" only.

Note: If you need room to list more subcontractors, enter this information on a plain sheet of paper and attach it to this form.

11. Total of invoice: \$ _____
12. Total of invoice from certified HUB subcontractors: \$ _____
13. Percent of HUB expenditures for this invoice: _____ %
(line 11 ÷ line 10) x 100

Part C. HUB Subcontracting Information

14. Total amount invoiced to date: \$ _____
15. Total HUB expenditures for contract to date: \$ _____
16. Percent of HUB expenditures for contract to date: _____ %
(line 15 ÷ line 14) x 100
17. HUB subcontracting goal for this contract: _____ %

Part D. Affirmation. The information provided on this form is complete and correct. *Your representative must sign here:*

18. Signature: _____ 19. Date: _____

Part E. Other Information. For TCEQ use only. (Project manager: Complete this box and sign.)

Type of funding: ☐ State ☐ Federal ☐ Both

Fund No. _____

Check if prime contractor is one of the following:

☐ River Authority ☐ COG ☐ Local govt. ☐ Interlocal

Index: COBJ:

Date In: ____ / ____ / ____ PCA Code(s) _____

Signature: _____

General Information

The purpose of this form is to help the Texas Commission on Environmental Quality (TCEQ; “us”) to track the value of business we do with Texas-certified “historically underutilized businesses” (HUBs) and federally designated “minority- or woman-owned business enterprises” (MWBEs). In this form, the acronym “HUB” refers to both of these classes of businesses.

Do I Have to Complete This Form?

If we have awarded you a contract to provide us with professional services, other services, or commodities *and* your contract contains a subcontracting plan, then you must complete this form each time you submit an invoice or set of invoices to us—even if no subcontracting occurred during the period covered by these invoices.

If you are a HUB, you must perform at least 25 percent of the total value of the contract with your own or leased employees as defined by the Internal Revenue Service in order for the agency to receive 100 percent HUB credit for the entire contract. You may subcontract up to 75 percent of the contract with HUBs or non-HUB subcontractors, but you must report to us the value—both dollar amount and percentage—of your contract that was actually performed by you and your subcontractors during each invoicing period.

Where Do I Turn This Form In?

When you have completed this form, attach it to your invoices and submit it to our project manager for your contract.

Where Can I Get More Answers?

If you have any other questions, call the project manager named on your contract or our HUB Program Director (512/239-1273).

Definitions

These brief definitions may help you complete this form. For terms where a full legal definition may be helpful, we have cited the rule or law that gives that definition..

Commodities—materials, supplies, or equipment. May include consumable articles (for example, office supplies) or durable items (for example, computers, furniture, or equipment).

Other services—all services other than construction and professional services, including consulting services (Texas Government Code, Chapter 2254, Subchapter B).

Prime contractor (or “prime”)—any business, agency, or individual who provides commodities or services to us under a purchase order or other contract.

Professional services—services of accountants, architects, engineers, land surveyors, optometrists, and physicians (Texas Government Code, Chapter 2254, Subchapter A).

Services—(1) functions performed for us by an outside source—for example, equipment repair, consulting, hazardous waste disposal, or work by short-term temporary employees.

(2) similar functions performed for the prime contractor by an outside source.

Subcontractor—any business, agency, or individual (other than an employee) who provides commodities or services to the prime contractor.

Total contract (Item 14)—on this form, total value of your contract with us, including all monetary amendments, if any.

Vendor ID No.—the 11-digit taxpayer identification number assigned to this subcontractor by Comptroller of Public Accounts. The subcontractor should be able to provide you with this number.

Instructions

1. **TCEQ Contract No.** - Enter the contract number we have assigned to this contract. This number appears on the first page of the contract
2. **Your Invoice No.** - Enter your invoice number for each invoice you are submitting with this form.
3. **Work Order No.** - If applicable, enter your work order number for the site, phase, or program.
4. **For work completed between** - Enter the period of time in which the work covered by these invoices was carried out.

5. **Prime Contractor** - Enter the name of the contractor to which we awarded this contract.
6. **Prime Contractor Vendor ID#** - Enter the 13-digit vendor identification number the Comptroller of Public Accounts has assigned the prime contractor.
7. **Contact** - Enter the name of the person authorized to complete this form for the prime contractor. We will contact this person if we have any questions about the information you have provided on this form.
8. **Phone** - Enter the phone number at which we can reach the contact person named in Item 7.
9. This percentage is applicable only when the prime contractor is a HUB.
10. **HUB Subcontractor Information** - *First column*—Enter the complete name of each HUB subcontractor. Enter information about this HUB subcontractor in the remaining columns of this row.
- Second column*—Enter the 13-digit vendor identification number the Comptroller of Public Accounts has assigned to this HUB subcontractor.
- Third column*—You have three options:
- If this subcontractor is a minority-owned business enterprise, check “MBE.”
 - If this subcontractor is a woman-owned business enterprise, check “WBE.”
 - If this subcontractor qualifies as *both* an MBE *and* a WBE, check *both* boxes.
- Fourth column*—Indicate, by checking the appropriate box, whether the subcontractor provided services or commodities. (If both, check “services” only.)
- Fifth column*—Enter the total of all invoices attached for this HUB subcontractor.
11. **Total of invoice** - Enter the total of *all* attached invoices
12. **Total of invoice from certified HUB subcontractors** - Enter the total amount of all attached invoices from HUBs.
13. **Percent of HUB expenditures for this invoice** - Use the instructions on the PAR form to calculate the percentage of this invoice that HUB subcontractors have completed.
14. **Total amount invoiced to date** - Enter the total of all invoices you have submitted to us to date for this contract, including the invoices attached to this PAR form.
15. **Total of HUB expenditures on contract to date** - Enter the total of all HUB subcontractor invoices for this contract to date.
16. **Percent of HUB expenditures for contract to date** - Use the instructions on the PAR form to calculate the percentage of this contract that HUB subcontractors have completed to date.
17. **HUB Subcontracting goal for this contract** - Your HUB goal is stated as a percentage in your contract. Enter your HUB goal here.
18. **Signature** - The person named in Item 5 must sign here as the representative of the prime contractor.
19. **Date** - Enter the date you completed this report.

United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this Offer or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐ I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

LOWER TIER

**EPA
United States Environmental Protection Agency
Washington, DC 20460**

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters**

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;**
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;**
- © Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and**
- (d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.**

I understand that a false statement on this certification may be grounds for rejection of this Offer or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

☐ **I am unable to certify to the above statements. My explanation is attached.**

EPA Form 5700-49 (11-88)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Release of Claims

_____ hereby releases the Texas Commission on Environmental Quality (TCEQ), its officers, agents, and employees from any and all future claims arising under or by virtue of TCEQ Contract Number _____.

Further certifies that all subcontractors, suppliers, employees and any party which has performed or provided service for this contract has been paid in full and satisfied.

All services and tasks required to be completed under the referenced contract have been completed.

Prompt payment, therefore, of any and all funds which may have been "retained" by TCEQ in accordance with said contract is requested.

Executed on this _____ day of _____, 20__.

By: _____
(signature)

(name, typed or printed)

(title)

Exhibit D

CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loan, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to the civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ORGANIZATION NAME AWARD NUMBER

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE DATE

Please check appropriate box below:

- ☐ Disclosure Form attached
☐ Disclosure Form Forthcoming
☐ Disclosure Form Not Applicable

Complete this form to disclose lobbying activities pursuant to 31 USC 1352

Standard Form-LL

**DISCLOSURE OF LOBBYING
CONTINUATION SHEET**

Reporting Entity: _____ Page _____ of _____

**Authorized for Local Reproduction
Standard Form - LLL-A**

INSTRUCTIONS FOR COMPLETION OF SF-LL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to Subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal Agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Offer (RFP) number, invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/Offer control number assigned by the Federal agency) Include prefixes, e.g., RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code for the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget Paperwork Reduction Project (0348-0046), Washington, D.C. 29503.

PURPOSE AND APPLICABILITY OF THE COST OR PRICE SUMMARY (COST OR PRICE SUMMARY IS ATTACHED BELOW)

The purpose of this form is to provide a simple form for the display of cost and price data. 40 CFR 33.290 requires the recipient to perform cost or price analysis for every procurement action, including subagreement modifications. This form is not required by EPA, but may be used at the recipient's option. If the recipient currently uses a cost and price analysis form which accomplishes the same objectives as this form, the recipient may use its own form.

INSTRUCTIONS

If this form is used, CAREFULLY READ AND FOLLOW ALL INSTRUCTIONS. Many items are not self-explanatory. Attach additional sheets if necessary.

Use only the applicable portion of this form:

Part I is applicable to all subagreements.
Part II is applicable to all subagreements requiring a cost analysis pursuant to EPA procurement regulations.
Part III is applicable to all subagreements where review is based on price comparison (i.e., price analysis).
Part IV certification will be executed as required by the instructions for each block.

PART I - GENERAL

Item 1 - Enter the name of the of the recipient as shown on the assistance agreement.
Item 2 - Enter the assistance identification number shown on the assistance agreement (or assigned to the project, if no assistance agreement has yet been executed).
Item 3 - Enter the name of the contractor or Subcontractor with whom the subagreement is proposed to be executed.
Item 4 - Enter the date of the contractor's or Subcontractor's Offer to the recipient.
Item 5 - Enter the full mailing address of the contractor or Subcontractor.
Item 6 - Give a brief description of the work to be performed under the proposed subagreement.

Part II - COST SUMMARY

This portion of the form is to be completed by the contractor (or his/her Subcontractor) with whom a subagreement is a formally advertised, competitively bid, fixed price subagreement.

Nothing in the following discussion should be interpreted as recommending the inclusion as direct costs any items normally treated as overhead costs in the firm's accounting or estimating system. 40 CFR Part 30 identifies general cost principles applicable to subagreements under EPA assistance. Pursuant to that Part, all subagreements awarded to profit-making organizations are subject to cost principles of 48 CFR 31.2. Architect engineer and construction contracts are also subject to 48 CFR 31.105.

Item 7 - Direct Labor

Direct labor costs normally include salaries at a regular time rate. Overtime premiums should be identified separately on an attachment. Incurrence of unanticipated overtime costs requires the approval of the recipient at the time of incurrence. If significant overtime is known to be needed at the time of

completion of the cost review form, the reasons therefore, labor categories, rates and hours should be identified on the attachment. Also included is the cost of partners' or principals' time when they are directly engaged in services to be rendered under the subagreement. In case the full time of any employee is not to be devoted to work to be performed under the subagreement, only the cost of actual time to be applied should be included. The compensation of a partner or principal shall be included as direct cost only for the time that she/he is expected to be engaged directly in the performance of work under the subagreement and only if it is the firm's normal practice to charge such time directly to all jobs. The rate of compensation of a partner or principal shall be commensurate with the cost of employing another qualified person to do such work, but the salary portion shall not exceed the actual salary rate of the individual concerned. Distribution of profits shall not be included in the rate of compensation.

Enter in block 7 the categories of professional or technical personnel necessary to perform each major element of work under the subagreement scope of services. Estimate hours worked for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any should be useful for the actual categories of labor contemplated. All projected increases should be supported by recent experience or established personnel policy. Enter in the far right column the total estimated direct labor cost.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. The method of estimating proposed hours worked.
- b. The computation techniques used in arriving at proposed labor rates.
- c. The specific documents, books or other records used as factual source material to develop proposed hours worked and labor rates.
- d. Detailed rate computations which were used in computing the information submitted on the form.

If in block 14a, the contractor has checked "No," a brief narrative description of the methods used in arriving at items a through d above shall be included on an attached sheet.

Item 8- Indirect Costs

Indirect cost may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. Neither is the use of any particular allocation base mandatory. However, it is mandatory that the method used results in an equitable allocation of indirect costs objectives which they support.

Normally, the firm's accounting system and estimating practices will determine the method used to allocate overhead costs. The firm's established practices, if in accord with generally accepted accounting principles and PROVIDED THEY PRODUCE EQUITABLE RESULTS IN THE CIRCUMSTANCES, will generally be accepted. Proposed overhead rates should represent the firm's best estimate of the rates to be experienced during the subagreement period. They should be based upon recent experience and be adjusted for known factors which will influence experienced trends.

Common overhead groupings are overhead on direct labor and general and administrative expenses. The first groupings usually include employment taxes, fringe benefits, holidays, vacation idle time, bonuses, applicable and direct labor, etc. The second generally includes the remaining costs, which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs. It is expected, however, that Offer groupings will correspond with the firm's normal method for accumulating indirect costs. (Under some accounting systems, the first grouping would be included instead under item 7.) No special categorization is required, provided the results are realistic and equitable.

Direct salaries are the normal distribution base for overhead cost but in some circumstances other bases produce more equitable results. As in the case of overhead cost groupings, the method to be used will depend upon the firm's normal practices and the equity of the results produced in the circumstances.

In the case of multibranch firms, joint ventures, or affiliates, it is expected that overhead costs applicable to specific location(s) where work is to be based on cost data from the most recent fiscal periods updated to reflect changes in volume of business or operations.

Enter in block 8 the indirect cost pools normally used by the firm for allocation of indirect costs. Enter indirect cost rate for each pool and extend each one by the rate base to which it applies to arrive at the estimated indirect costs to be incurred during the actual performance of the work. If the indirect labor total from block 7 is not used as the rate base for any of the indirect cost pools, the rate base used must be explained on an attached sheet.

A brief narrative statement outlining the firm's policies and practices for accumulating indirect costs. Enter the indirect cost rate costs and the method used to compute the proposed rate or rates shall accompany the form. Include comment on the firm's policies regarding the pricing and costing of principals' time. The normal accounting treatment of principals' salaries, the annual amounts, and the hourly charge rate, if used, should be discussed.

Enter in the far right column the total estimated indirect costs.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

a. Detailed cost data showing overhead accounts, allocation bases, and rate computations for the preceding fiscal period. If more than six months of the current fiscal period have elapsed, cost data for this period should be included as one of the three period(s).

b. Company budgets, budgetary cost data and overhead rates computations for future period(s).

Item 9 - Other Direct Costs

The following items are illustrative of costs normally included in this category of costs:

a. *Travel cost, including transportation, lodging, subsistence, and incidental expenses incurred by personnel or consultants while in travel status in connection with the performance of services required by the contract. The cost principles generally require the use of less than first class air accommodations and also limit the cost of private aircraft.*

b. *Equipment, Materials, and Supplies*

(1) *Long distance telephone calls, telegraph and cable expenses to be incurred in connection with the performance of services required in connection the subagreement.*

(2) *Reproduction costs, including blueprints, black and white prints, ozalid prints, photographs, photostats, negatives; and express charges.*

(3) *Commercial printing, binding, artwork, and models.*

(4) *Special equipment.*

c. *Subcontractors*

d. *Other Direct costs, if any, not included above.*

Enter in blocks 9a-d all other direct costs proposed. Travel costs entered must be supported by an attachment which identifies the number of staff trips proposed and the estimated cost per staff trip for both local and long distance transportation. The number of days and the rate per day must be provided to support the per diem shown. Each Subcontract and consultant agreement must be identified separately in block 9c.

Enter in the far right column on line 9e the total of all other direct costs (9a-d).

Supporting data to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

a. *basis for other direct costs proposed.*

b. *factual sources of costs, rates, etc., used in computing proposed amount of each cost element.*

Item 10 - Total Estimated Cost

Enter the total of all direct labor, indirect costs and other direct costs from items 7, 8, and 9.

Item 11 - Profit

A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit will be estimated as a dollar amount after considering:

a. *degree of risk.*

b. *nature of the work to be performed.*

c. extent of firm's investment.

d. Subcontracting of work, and

e. other criteria.

The Federal Acquisition Regulation cost principles applicable to subagreements with profit-making organizations (40 CFR 31.2 and 31.105) disallow certain types of costs which are sometimes incurred by firms in the normal conduct of their business. Examples of costs which are not allowable under these cost principles include, but are not limited to, entertainment, interest on borrowed capital, and bad debts. Because the Government considers "profit" to be the excess of price over allowable costs, such computation can indicate a higher profit estimate than the firm's experienced profit as it customarily computes it. The contractor may separately disclose to the recipient its customary computations.

Enter the dollar amount of profit in block 11.

Item 12 - Total Price

Enter the total of items 10 and 11.

Part III - PRICE SUMMARY

This portion of the form is for use by a recipient when price comparison, i.e., price analysis, is used for subagreement review. It may also be used by a contractor when price comparison is used as a basis for award of a Subcontract.

Item 13 - Competitor's Catalog Listings, In-House Estimates, Price Quotes

Enter sources of all competitive bids or quotes received, or catalogs used and their prices, or in-house estimates made, if appropriate, for comparison. Attach additional sheets if necessary, particularly for purchases of several different items.

Enter in the far right column the proposed price for the subagreement.

Part IV - CERTIFICATIONS

Item 14 - Contractor - FOR USE BY CONTRACTOR OR SUBCONTRACTOR ONLY.

Complete this block only if part II has been completed.

Enter the specific cost principles with which the costs summary of Part II conforms. Cost principles applicable to subagreements with various types or organizations are identified in 40 CFR Part 30.4010. Cost principles applicable to subagreements with profit-making organizations are those at 48 CFR 31.2 and, for architect-engineer or construction contracts, 48 CFR 31.105.

c. (1) Describe the Offer, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

(2) Enter the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the subagreement is not limited by the personal knowledge of the contractor's negotiator if the time of agreement, showing that the negotiated price is not based on

complete, current, and accurate data.

(3) Enter the date of signature. This date should be as close as practicable to the date when the price negotiations were concluded and the subagreement price was agreed to (not to exceed 30 days).

Item 15 - Recipient Reviewer - FOR USE BY RECIPIENT ONLY.

If required by applicable assistance regulations, the recipient must submit the signed form for EPA review prior to execution of the subagreement.

Item 16 - EPA Reviewer - FOR USE BY EPA ONLY.



EPA

COST OR PRICE SUMMARY
(see accompanying instructions before completing this form)

Form approved
OMB No. 2030-0011
Approval expires 10-31-86

PART I - GENERAL

1. RECIPIENT		2. ASSISTANCE IDENTIFICATION NO.	
3. NAME CONTRACTOR OR SUBCONTRACTOR		4. DATE OF PROPOSAL	
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Include ZIP Code)		6. TYPE OF SERVICE TO BE FURNISHED	
TELEPHONE NUMBER(Include Area Code)			

PART II - COST SUMMARY

7. DIRECT LABOR (specify labor categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
		\$	\$	
DIRECT LABOR TOTAL:				\$
8. INDIRECT COSTS (Specify indirect cost pool)	RATE	x BASE =	ESTIMATED COST	
		\$	\$	
INDIRECT COSTS TOTAL:				\$
9. OTHER DIRECT COSTS				
a. TRAVEL			ESTIMATED COST	
(1) TRANSPORTATION			\$	
(2) PER DIEM			\$	
TRAVEL SUBTOTAL:			\$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)			ESTIMATED COST	
			\$	
EQUIPMENT SUBTOTAL:				
c. SUBCONTRACTS			ESTIMATED COST	
			\$	
SUBCONTRACTS SUBTOTAL:			\$	
d. OTHER (Specify categories)			ESTIMATED COST	
			\$	
OTHER SUBTOTAL:			\$	
e. OTHER DIRECT COSTS TOTAL:				
			\$	
10. TOTAL ESTIMATED COST				\$
11. PROFIT				\$
12. TOTAL PRICE				\$

PART III - PRICE SUMMARY

13. COMPETITOR'S CATALOG LISTINGS, IN-HOUSE ESTIMATES, PRIOR QUOTES (Indicate basis for price comparison)	MARKET PRICE(S)	PROPOSED PRICE

		\$

PART IV - CERTIFICATIONS

14 CONTRACTOR		
14a. HAS A FEDERAL AGENCY OR FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL ASSISTANCE AGREEMENT OR CONTRACT WITHIN THE PAST 12 MONTHS? <input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes" give name, address, and telephone number of reviewing office)		
14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES		
14c. This proposal is submitted for use in connection with and in response to: (1)		
This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of:		(2) DATE
I further certify that a financial management capability exists to fully accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above cost and pricing data have been determined, as a result of audit, not to have been complete, current, and accurate as of the date above.		
(3) TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION
15. RECIPIENT REVIEWER		
I certify that I have reviewed the cost/price summary set forth herein and the proposed cost/price appear acceptable for subagreement award.		
TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION
16. EPA REVIEWER		
TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION